

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BUGGS, Minors.

UNPUBLISHED

June 24, 2014

Nos. 319442; 319443
Kent Circuit Court
Family Division
LC Nos. 12-053640-NA
12-053642-NA
12-053643-NA
12-053644-NA
12-053645-NA

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

In docket nos. 319442 and 319443, respondent mother and father appeal as of right the order terminating their parental rights to the minor children P.B. (born February 2003), J.B. (born September 2004), S.B. (born September 2007), K.B.1 (born December 2008), and K.B.2 (born December 2008). Respondents' parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (g) (failure to provide proper care and custody). We affirm.

I. FACTUAL BACKGROUND

The minor children came to petitioner's attention because in anticipation of serving a jail sentence, respondent mother contacted a friend and requested that he watch the minors. When a Child Protective Services (CPS) worker visited the home a few days later, she found it to be in a deplorable and unsanitary condition. The children were hungry, wearing soiled clothing, and fecal matter filled the bathtub. While respondent mother admitted that her house was unclean and that the fecal matter and urine were in the bathtub when she was there, she claimed it worsened in the few days she was absent. Respondent father was not living in the home at this time, and was in fact homeless.

The children were removed from the home and the court subsequently took jurisdiction over the children. After removal, the children revealed troubling instances from their home life. The three older children reported to watching their parents have sexual intercourse, and all of the minors engaged in sexual conduct with each other while in respondents' care. The children also reported instances of domestic violence in the home, and respondent mother had a Personal Protection Order (PPO) against respondent father. There also were allegations of significant

drug and alcohol abuse in front of the minors. Both respondents repeatedly failed drug screens throughout these proceedings.

In foster care, the minors continued to exhibit troubling mental and emotional health behaviors. One of the minors killed a cat, and two of the minors were caught engaging in sexual conduct with each other. The three older children expressed fear regarding visiting respondent father, and respondent father's visitation with them was subsequently suspended. Neither respondent maintained stable housing or employment throughout the proceedings.¹ The foster care worker testified that respondents made limited progress on their respective treatment plans.

The case progressed for a year in the lower court, and culminated in a termination hearing. The trial court found that termination was warranted pursuant to the clear and convincing evidence of MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist) and (g) (failure to provide proper care and custody). The court also found that termination was in the children's best interest. Both respondents now appeal.

II. TERMINATION

A. STANDARD OF REVIEW

We review a trial court's findings regarding the statutory grounds for clear error. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009) (quotation marks omitted).

B. ANALYSIS

"In a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App at 459. Termination is justified under MCL 712A.19b(3)(g) when: "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

There is significant evidence that respondent parents failed to provide proper care or custody of the minor children in this case when respondent mother was incarcerated and left the minor children at home to be cared for by an unrelated individual. A few days later, a CPS worker discovered that the children were living in deplorable conditions, with fecal matter filling

¹ Respondent mother was released from jail in January 2013, and began serving another sentence on September 2013. Pursuant to her conviction for second-degree child abuse on June 17, 2013, there was a no contact order between respondent mother and the children.

the bathtub, and with none of the utilities working or food in the home.² Respondent father was homeless and did not care for the children.

After the children came under court jurisdiction, the three older children reported to witnessing respondents have sexual intercourse. Respondent mother also had a PPO against respondent father, and the oldest child reported witnessing significant domestic violence in the home. S.B. and J.B. reported that respondent father would grab or spank their penises as a form of punishment, and P.B. reported that respondents would punch and spank him. The children also revealed that they had witnessed respondent mother consuming alcohol and drugs in the past. Both respondents repeatedly tested positive for drugs throughout these proceedings. At one point, respondent mother's drug test came back positive for opiates, marijuana, and cocaine.

Thus, the record supports the trial court's conclusion that respondents failed to provide proper care or custody of the minor children. MCL 712A.19b(3)(g). Moreover, the trial court did not err in finding no reasonable expectation that respondents would be able to provide proper care and custody within a reasonable time considering the children's ages. All of the children had severe emotional and behavioral problems. In fact, one of the children killed a cat while in foster care, and all of the children reported that they had engaged in sexual conduct with each other before coming into petitioner's care.

Yet, respondents refused to take responsibility for the children's severe issues, and instead claimed the cause was the children's removal from their care. At meetings respondents attended with the children, respondents narrowly focused on their belief that the children were making them look bad. Respondents claimed that the children were lying about what they were exposed to while in their care. Respondent father's parenting time with P.B., S.B., and J.B. was eventually suspended because they were afraid of him, and there were concerns that P.B., S.B., and J.B. would not make improvements in therapy if they continued to see him. The foster care worker testified that she did not believe respondents would ensure the children received the necessary services if returned to their care. Evidence at the termination hearing also indicated that it would be nearly impossible for someone to care for all of the children in the same home in light of the children's special needs, and that it was against the therapeutic recommendations.

Homelessness also was at issue in these proceedings. Respondents had been living with friends and relatives "on and off" throughout the proceeding. They were living in their vehicle at one point and acquired housing at the beginning of September 2013. However, they were expelled from that housing when they tested positive for alcohol. The case worker was not aware that respondent mother found housing to live in after she was released from jail. Respondent father did not have stable housing at the time of the termination hearing.

Although respondents contend that they should have been given additional time, the record refutes the conclusion that any additional time was warranted, especially considering the

² The house was later condemned.

children's ages.³ Respondents demonstrated a lack of commitment to maintaining sobriety and obtaining stable housing and employment during the year long proceedings. Given respondents' failure to take responsibility for the children's emotional and behavioral issues, there is no indication that respondents would be able to care for the children's special needs within a reasonable time. This Court has previously found that termination was proper under MCL 712A.19b(3)(g) where the respondent lacked housing and continued to abuse substances, which "affected her ability to provide the most rudimentary care the children needed." *In re CR*, 250 Mich App 185, 195-196; 646 NW2d 506 (2002).

We also reject respondent mother's argument that, pursuant to *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), she should have been provided additional time to maintain sobriety and locate housing and employment upon her release from jail. Contrary to such arguments, the trial court did not terminate respondent mother's rights because she was incarcerated or the no-contact order. Rather, it was the deplorable condition of the home before respondent mother was incarcerated, her role in and refusal to take responsibility for the severe trauma the children experienced, and her failure to have any viable plan in place for housing or employment after her release from jail. The trial court's ruling did not contravene *In re Mason*, *supra*.⁴

We find no clear error in the trial court terminating respondents' parental rights pursuant to MCL 712A.19b(3)(g).⁵

III. BEST INTERESTS

A. STANDARD OF REVIEW

In docket no. 319443, respondent father also contends that termination of his parental rights was not in the minor children's best interests. We review a trial court's findings regarding the best interests for clear error. *In re VanDalen*, 293 Mich App at 139. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459 (quotation marks omitted).

³ At the time of the termination hearing, P.B. was 10 years old, J.B. was nine years old, S.B. was six years old, and K.B.1 and K.B.2 were four years old.

⁴ Respondent mother also contends that the trial court improperly "chastise[d]" her for taking six months to complete her psychological evaluation even though it took the agency "almost equal time" to make the evaluation available to the parties. Not only is that argument unsupported by the record, respondent mother was not diagnosed with mental illness. There is nothing to indicate that respondent mother would have made additional progress if the evaluation had been made available sooner.

⁵ Because we have concluded that at least one ground for termination existed, we need not consider the additional ground upon which the trial court based its decision. *In re HRC*, 286 Mich App at 461.

B. ANALYSIS

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A court may consider evidence that the children were not safe with respondents, were thriving in foster care, the need for permanency, stability, and finality, and the bond between respondents and the children. *Id.* at 41-42; *In re VanDalen*, 293 Mich App at 141; *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

In the instant case, the children were traumatized and sexually abused each other while in respondents’ care. They were exposed to neglect, deplorable living conditions, violence, drug use, and sexual activity between respondents. P.B., J.B., and S.B. were afraid of respondent father and did not want to return to his care. Respondent father also refused to attend parenting time with K.B.1 and K.B.2 at one point because he was experiencing “emotional distress.” Even though K.B.1 and K.B.2 were only three years old when taken into custody, K.B.2 reported during an assessment that respondent father was “mean.” The case worker testified that she had not received verification that respondent father was employed since September 2013. Nor did he have stable housing at the time of the termination hearing.

While respondent father tried to distance himself from the home environment, he participated in the reported violence and sexual conduct with respondent mother. Though he also attempts to distance himself from the unsanitary living conditions, he did nothing to prevent or alleviate those conditions, and instead allowed his children to remain in such an environment. He also repeatedly refers to the “barriers” that prevented his progress, and cites to the suspension of his parenting time. Yet, that so-called barrier was instituted because the three older children expressed fear of respondent father and opposition to being placed with him.

Respondent father, however, maintains that because he was “willing to take advantage of whatever services were offered once the barriers placed in his way were reduced,” termination was not in the children’s best interests. Yet, a parent’s belated willingness to comply fully with services is not the proper inquiry. Rather, the trial court correctly looked at what was in the best interests of the children, despite any limited progress respondent father may have made. As the evidence below demonstrates, the children were in dire need of structure, stability, “clear rules,” and “positive reinforcements.” Rather than a willingness to provide such an environment, the record is replete with examples of respondent father’s unwillingness or inability to put the children’s needs first. The caseworker also testified that the children had potential adoptive placements, which would provide them with stability.

Therefore, the trial court did not err in finding that termination was in the children’s best interests.

IV. CONCLUSION

The trial court did not err in finding clear and convincing evidence to terminate respondents' parental rights pursuant to MCL 712A.19b(3)(g). The court also properly found that termination was in the children's best interests. We affirm.

/s/ William B. Murphy
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan